

**ATTACHMENT B**

**Response to Grand Jury Report  
2003-2004 Civil Grand Jury**

**Report Title:** Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority

**Report Date:** May 27, 2004

**Response by:** Honorable Donald F. Gage      **Title:** Chairperson, Santa Clara Valley Transportation Authority Board of Directors, and Members of the Board of Directors

**FINDINGS**

- ☐ I (we) agree with the Findings numbered: \_\_\_\_\_
- ☒ I (we) disagree wholly or partially with the Findings numbered: I, II, III  
(Attach a statement specifying any portion of the Findings that are disputed; include an explanation of the reasons therefor.)

**RECOMMENDATIONS**

- ☐ Recommendations numbered \_\_\_\_\_ have been implemented.  
(Attach a summary describing the implemented actions.)
- ☐ Recommendations numbered \_\_\_\_\_ have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for the implementation.)
- ☐ Recommendations numbered \_\_\_\_\_ require further analysis.  
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- ☒ Recommendations numbered I, II, III will not be implemented because they are not warranted or are not reasonable.  
(Attach an explanation.)

August 12, 2004  
Date

  
Signature

Donald F. Gage  
Print Name

Number of pages attached: 10



August 12, 2004

The Honorable Thomas P. Hansen  
Presiding Judge  
Santa Clara County Superior Court  
191 North First Street  
San Jose, CA 95113

Dear Judge Hansen:

The following is provided in response to the findings and recommendations presented in the 2003-04 Civil Grand Jury's Final Report, Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority, (hereafter referred to as "the report") as transmitted to me by 2003-04 Grand Jury Foreperson Richard H. Woodward on June 18, 2004.

We wish to thank the members of the Grand Jury for their time and effort in developing their comments regarding the Santa Clara Valley Transportation Authority. Unfortunately, we had the opportunity to meet with only five of the nineteen Grand Jury members. We wish there had been an opportunity for us to directly share information with all the Grand Jury members in analyzing the complexities of an organization like VTA. As such, members may find themselves quickly immersed in an environment of unique terminology and interrelationships that initially may appear to reflect a local issue, but ultimately turns out to be much more complicated.

While we do not concur with three major conclusions contained in the Grand Jury's report, we wholeheartedly respect the concept and process in which a citizen Grand Jury reviews selected elements of a governmental entity and reports their conclusions to the public. We believe the Grand Jury plays a valuable role in encouraging public discussion about local government policies and practices.

Our specific responses to the three conclusions and recommendations contained in the Grand Jury's June 18 report are as follows:

**Grand Jury Finding I.** "The VTA Board, as currently constituted of appointed members from elected bodies in the County, does not provide direct voter representation on transportation issues, makes accountability remote, provides for conflicts in responsibilities, and overextends Board members performing both their elected and appointed responsibilities."

**Grand Jury Recommendation I.** "The current structure of the VTA Board should be made more responsive to the needs and financial management of the regional transportation system as whole by providing for, via enabling legislation, members dedicated to transportation that are either directly elected, appointed as their main public service responsibility or some combination of the two. The enabling legislation should be sponsored by one or more of the major constituent agencies in the VTA, such as the County Board of Supervisors."

#### **VTA RESPONSE TO FINDING I AND RECOMMENDATION I:**

We disagree with the recommendation for the reasons outlined below:

- This finding appears to disregard the fact that the current organizational structure of VTA encompasses a critical nexus between land use planning authority and transportation responsibilities. The current VTA Board structure facilitates this critical interrelationship specifically because, as city council members or county supervisors, each of the Board's twelve members have concurrent and ongoing land use decision making responsibilities.

Knowledge of transit projects and private developments within a Board member's jurisdiction has helped forge much better land use planning and development that in the long term will ensure that land use decisions and public transportation decisions will be complementary and therefore provide the maximum benefit to the communities it serves. Selected examples include transit supportive rezoning and a variety of developments in San Jose, Milpitas, Mountain View, Sunnyvale, Campbell and Los Gatos.

- The report asserts that VTA is staff-driven, inferring a lack of Board understanding, direction or authority. This is factually inaccurate. VTA follows the time-tested structure and process, whereby the Board of Directors establishes policy and the professional staff implements that policy. Regardless of the size or composition of policy boards, this is a long-established and proven approach for most public agencies, not just transportation agencies.

A very clear example of the leadership the Board of Directors regularly exercises was the Board's 2003 decision to pursue a court decision to utilize 2000 Measure A funds, through bonding, to defer a staff-recommended 21 percent service

reduction. This direction was given by a Board that thoroughly understood the full extent of the financial issues before them, had considered a great deal of public and stakeholder comments, and exercised their authority to make the policy decision. The Board's decision in this instance to take a different approach from that recommended by staff.

Staff, based upon professional experience and expertise, is charged with the responsibility of analyzing issues, reviewing options and recommending action for Board consideration. The VTA Board provides direction to staff during all phases of staff's technical analysis of an issue. In fact, the Board often drives the development of policy by requesting staff to evaluate additional options for a specific issue. For example, this was very much the case during the work of the Board's Ad Hoc Financial Stability Committee.

VTA's policy-making processes also contain a significant number of opportunities for public input. Prior to taking action, the Board has open and frank discussions and regularly seeks public input. Examples of this approach include budget decisions, fare policy revisions, service changes, long-range and short-range capital and operating plan adoption, and major corridor project approval. The Board's decision-making structure and process emphasize input from its advisory committees (most of which are composed entirely of citizen volunteers), ad hoc advisory committees, project policy advisory boards, public hearings, community meetings, and interagency working groups.

- We don't believe the Grand Jury's report suggestion that the VTA Board structure look to the Santa Barbara and Stockton transit systems as examples is a valid recommendation. Both of these other systems are small bus-only operations in very unique operating environments. Santa Barbara has a fleet of only 98 buses and a staff of 180 employees. Stockton has 180 buses and 340 employees. Neither system has light rail, commuter rail, and major construction or congestion management responsibilities. Neither is operating in an area as large or an environment as complex as VTA. Neither has major regional transportation policy and service responsibilities or impacts. Therefore, valid comparisons cannot be drawn.
- The report also suggests the Santa Clara Valley Water District's structure as a model for the VTA Board composition. Both missions are important in their nature. However, the Water District's mission is much more narrow in scope and revenue sources. VTA's complexity, in both its mission and funding, is much greater. Thus, this comparison does not appear to be an appropriate one. It should be pointed out, however, that the Water District follows the same proven protocol as VTA (and nearly all other public agencies), in that the staff conducts technical analysis, the Board sets policy and the professional staff implements that policy.

- The report makes two sweeping statements that do not appear to be supportable by the referenced interview list. The first statement is "some city council members expressed to the Grand Jury that they have chosen not to be appointed to the VTA Board." Yet on the Grand Jury interview list, they reference interviewing only two San Jose City Council Members and no others from any other city council. The second statement is that "Past and existing Board members admit freely that VTA is very much staff-driven rather than a board managed organization." Once again we note that the report referenced interviews with only four members of the Board of Supervisors and two City of San Jose Council Members.

In contrast to the statement contained in the Grand Jury's report, it is noteworthy that VTA's current Board of Directors consists of: two mayors, two vice-mayors, one mayor pro-tem, the chair of the County Board of Supervisors and both the president and vice president of the Santa Clara County Cities Association. To date, we have never received any feedback from any jurisdiction that eligible city council members or county supervisors have passed on the opportunity to serve on the VTA Board of Directors. In fact, the sense we have is quite the contrary. Because of transportation's impact on development of a community, a VTA Board appointment is often a much sought after responsibility among local elected officials.

- The report suggests that because VTA's Board of Directors rotates or that they do not have business or transportation experience, the Board members are not qualified to serve. We would argue that the experience of the current Board members points to a different conclusion.

There are twelve voting and five alternate members of the Board of Directors. Each has responsibilities in transportation policy and planning in their respective jurisdiction. There is also one Ex-Officio non-voting member who represents the County on the Metropolitan Transportation Commission (MTC). The County's other MTC Commissioner currently represents a city group on the VTA Board and serves as Chairman of the Joint Peninsula Powers Board (Caltrain). While we have recently welcomed three new Board appointees this past year, the current total accumulated transportation policy experience of the Board exceeds 99 years. The average years of transportation policy experience of current VTA Board members is 5.5 years.

Board members also have a substantial amount of business experience earned in the private sector. VTA's Board boasts a wide range of professional backgrounds (some retired, some current), including business, the technology industry, engineering, education, legal, finance, and government. It is important to reinforce that the primary role of any public sector board is to establish policy, represent their constituents and work for the community as a whole. We believe that the backgrounds and experiences of the members of the current Board help them to fulfill these responsibilities well.

- Finally, it is also important to point out that the Board of Directors recently appointed a subcommittee of Board members to review the current Board structure with the goal of reviewing whether the Board's current composition was still inclusive and responsive to transportation and land use related concerns of the cities and the county. The subcommittee's conclusion was that the current structure did not need to be revised. However, it was recommended that the Policy Advisory Committee (an advisory committee composed of representatives from the County and all 15 Santa Clara County cities) needed to take a more proactive approach in reporting out on issues and offering recommendations to the Board. This has been successfully implemented. The Board will revisit the board structure issue next year to evaluate the success of the Policy Advisory Committee's efforts.

**Grand Jury Finding II.** "The VTA Board as currently constituted is too large and its members too transient to efficiently provide management oversight to VTA. As a result, the VTA Board has not reacted to the present budget problems with diligence, has depleted the financial reserves in the system, and has borrowed against future tax revenues rather than resolving an ongoing operational deficit."

**Grand Jury Recommendation II.** "The current size of the VTA Board should be reduced, via enabling legislation, to a smaller Board of 5 to 7 members that would be more involved in and accountable for the financial and operational management of VTA. The enabling legislation should be sponsored by one or more of the major constituent agencies in the VTA, such as the County Board of Supervisors."

### **VTA RESPONSE TO FINDING II AND RECOMMENDATION II:**

We disagree with the Grand Jury's report recommendation in this area for the following reasons:

- The report concludes that the VTA's Board very size precludes effective oversight of an organization this large. However, the report offers no supportable basis for that conclusion. We do not believe that the size of the current Board in any way hinders effective decision-making.
- The report concludes that the size of the Board was a negative factor in how the Board has reacted to the fiscal crisis now being faced VTA. The report states that if the VTA Board were smaller in size, the Board would have: 1) been able to react sooner and better to its fiscal crisis; 2) not utilized reserves; 3) found a way to resolve the financial situation while continuing to provide needed service; and 4) continued to advance important construction projects.

The reality and known facts simply do not support this conclusion. VTA was the first public sector organization in the greater Bay Area to recognize and publicly share its analysis that this fiscal downturn was going to be longer and cut deeper

than any downturn the Valley had seen in recent history. The downturn would mean a reduction in sales tax revenue, a primary source of funding for VTA operations. The longer the downturn, the less operating revenue VTA would have for services. As it would turn out, VTA would experience ten straight quarters of sales tax revenue and a 30 percent decline in revenues.

Given these circumstances, it was not the size of the Board that made addressing the financial and service problems so difficult. It was a combination of the severe decline in sales tax revenues over a 2.5-year period coupled with a desire on the part of the Board and staff to maintain as much transportation service as possible for as long as possible.

This difficult situation notwithstanding, the Board nevertheless moved expeditiously but carefully to address the financial situation. Under the Board's leadership, VTA staff took immediate steps to reduce costs, defer several capital projects and institute efficiency improvements.

In early 2002, the VTA Board Chair, with the unanimous support and approval of the full Board, requested representatives of the business community to conduct an operational review of VTA and to recommend potential savings or revenue-enhancing measures. Several of the business review team's recommendations have been implemented. By late 2002, the Chair, again with the support and approval of the entire Board, also appointed a special Ad Hoc Financial Stability Committee made up not only of Board members, but also key stakeholders from the community-at-large, the business community and labor to review VTA's financial situation in depth and develop viable recommendations that would lead to financial stability for the organization.

- The Grand Jury's report is critical of VTA's use of its financial reserves. Yet the reserves served the purpose for which they were created. It was under the Board's direction that a 15 percent operating reserve was established and attained. This was a significant change from the VTA's predecessor organization, the County Transportation Authority. The reserves provided VTA the "rainy day" financial resources needed to minimize the impact of this unprecedented economic downturn on our service to our customers for more than two years.

It should be noted that a Grand Jury report a few years ago was critical of VTA for having *too much* in financial reserves and recommended that it would be better spent on more service. However, fortunately, the Board decided to maintain its reserve levels. As a result, over the past two financially difficult years, Santa Clara County transit riders have benefited from that decision because VTA was able to provide more service than would have been the case if the reserves were not there.

- As previously noted, the current Board developed and implemented a strategy to bond against funds that VTA will not begin to receive until April 2006 as a means

to defer a 21 percent service reduction. After an extensive community outreach process, the Board's decision to take the bonding approach was the direct result of their responsiveness to the concerns of a public that relies on VTA service and to whom every VTA Board member is directly accountable.

In addition, in 2004 the Board adopted a nineteen-point strategy recommended by the aforementioned Ad Hoc Financial Stability Committee. The strategy is designed to restore financial stability created by the loss of significant sales tax revenues by reducing costs and increasing revenues. The development of the strategy included a significant amount of input from the public and discussion by members of the VTA Board.

In trying to maintain quality services in a fiscally-challenging environment, the Board has directed VTA staff to implement several policies and programs that many in our community were not happy about--fare increases, service modifications, and higher service standards. But in the final analysis, VTA has been able to maintain a very high quality service; our vehicles are safe, clean and are on time. Service has been reduced to meet the fiscal challenges, but service quality has not diminished.

**Grand Jury Finding III.** "The VTA Board has proceeded with a transit capital improvement plan that cannot accomplish all that was promised in Measure A."

**Grand Jury Recommendation III.** "The VTA Board should delay expenditures for BART and provide more complete funding for other transit options. If VTA wants authorization of this change in plans by the voters, this should be done after a clear explanation to the public of the relative costs of the various transit options, and before a request for an additional ½ cent sales tax increase."

### **VTA RESPONSE TO FINDING III AND RECOMMENDATION III:**

We differ with the Grand Jury's recommendation in this area for the following reasons:

- Perhaps the strongest reason for making the BART project the top priority is keeping faith with the voters who overwhelmingly supported Measure A and the BART project in November 2000.

VTA remains committed to delivering all of the projects over the 30-year life of Measure A. From VTA's perspective, it is not a question of which projects should be completed but rather how can we deliver all the projects approved by the voters plus add cost-effective service in the future. It is important to remember that Measure A primarily covers capital costs. Additional operating revenue, beyond that generated from Measure A, will be needed to support current and future VTA services.



- The report makes a connection between VTA's fiscal situation and the BART project. This is an understandable but erroneous assumption. In fact, without the BART project and Measure A, VTA would be in a much worse fiscal crisis. There should be no doubt that the BART project was the signature project that is responsible for the 71 percent voter support of Measure A. Polling done since the November 2000 vote confirms that BART remains the region's top transportation priority.

Though Measure A was not originally intended to support current services, it is the future revenue stream from Measure A that provides the basis for VTA to sustain the current level of services until an additional, ongoing revenue stream for operating costs can be identified. Without the public's strong support of the BART project in Measure A, VTA would have had to implement a 21 percent service reduction. Thanks to the region's strong support for BART, this significant reduction in current service has been, at least temporarily, avoided.

- The Grand Jury report infers that VTA's former Chief Financial Officer was forced to leave VTA for a lesser position out of state because of a statement he made regarding the deliverability of the BART project. Nothing could be further from the truth. The fact is he and his spouse (also formerly a VTA employee) found a unique opportunity to return to their home state and hometown where both of their families reside.
- The Grand Jury's report challenges VTA's statements that delaying the BART project will add cost. However, the report did not offer data or information supporting its challenge. We have calculated that a five-year delay could escalate the BART project cost by nearly \$700 million. We continue to have confidence in that calculation.
- The report asserted that the future fare box recovery ratio for BART would be in the range of 35 percent. Unfortunately, the report provided no explanation or data to support its assertion. All of the projected ridership calculations for this project done by experts in ridership modeling have consistently concluded the BART extension would see a fare box recovery rate at or above 70 percent. Given the lack of credible information to the contrary, VTA continues to have confidence in the 70 percent projections.
- The report asserts that spending money on the BART project now may make any changes more difficult and wasteful. VTA has often publicly noted that: 1) we currently own the majority of the right-of-way to downtown San Jose; 2) this next phase of work is limited to preliminary engineering; 3) preliminary engineering will help refine the project design and ultimate cost even more accurately; and 4) the preliminary engineering cost of \$170 million will be partially supported by State and Federal funds. In addition, we have publicly noted that VTA will be unable to proceed beyond preliminary engineering phase to final design phase without the approval of the Federal Transit Administration. That will not occur

until a fiscally sound long-term financial program is in place to support the entire VTA system. While the BART project is a major expenditure of public funds, we believe the aforementioned parameters will minimize the need for future changes and wasteful spending.

Throughout this period VTA has also continued to manage nearly \$2 billion worth of capital projects, all designed and delivered on time or well ahead of schedule and well-under budget. Despite the unprecedented economic downturn, VTA, working with the County, has been or will be able to successfully deliver nearly every project in the 1996 Measure A/B Transportation Improvement Plan. Examples include: Highway 101 widening; Interstate 880 Widening; Highway 85/87 Interchange; Route 85/101 North Interchange; Route 237/880 Interchange; Route 87 HOV lanes; Route 152 improvements; Highway 85 Noise Mitigation; Tasman East Light Rail; Capitol Light Rail; Vasona Light Rail; and several Caltrain station and track improvement projects in Santa Clara County.

In conclusion, we believe the Grand Jury's report fails to recognize the tireless work by the VTA Board of Directors, VTA's stakeholder Advisory Committees, VTA's dedicated workforce and labor leadership to guide this organization through these difficult fiscal times. We readily recognize there is always room for improvement and we are always receptive to thoughtful, constructive criticism. It was in that spirit that the Board requested the business community to review our organization and subsequently established the Ad Hoc Financial Stability Committee. As noted earlier, we have or are implementing many recommendations from both these introspective reviews.

The entire VTA Board is committed to:

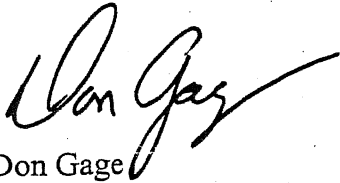
- ✓ the provision of quality transportation services,
- ✓ building the projects supported by the voting public,
- ✓ maintaining a fiscally sound approach to the provision of services and the construction of projects, and
- ✓ continuous internal improvement of the organization.

In carrying out its responsibilities, the VTA Board routinely listens and acts on the significant amount of input from the public. We have managed to maintain quality services in a difficult fiscal environment and keep hundreds of millions of dollars worth of capital projects on or under schedule and on or under budget. Again, while there is always room for improvement in any organization, we believe the key conclusions reached in the Grand Jury's report are the result of incomplete information about the fiscal environment VTA now faces and the specific actions the Board has taken—and continues to take—to ensure VTA maintains the maximum quality and quantity of transportation services in Santa Clara County. In addition, the Grand Jury report does not appear to

reflect a clear understanding of the relationship between the BART project, the public support of that project and VTA's current operations fiscal crisis.

However, we do appreciate the Grand Jury's efforts to encourage public discussion on VTA's operations and direction. Please know that we remain committed to doing everything we can to provide this community and this region with the highest quality transportation network we can.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Gage", with a stylized flourish extending from the end.

Don Gage  
Chair, VTA Board of Directors

cc: Board of Directors  
Peter M. Cipolla, General Manager